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PROCESS

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#### SUMMARY AND INTRODUCTION

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¶1. The EU has been growing from the founding "Six" to the current EU-27. Enlargement is viewed as one of the EU's most successful policies and a powerful foreign policy tool for extending a zone of peace and democracy across the European continent. The tight conditions for membership and the various stages of the accession process, as outlined below, allow for no flexibility to depart from EU standards, rules and practices. Following the unprecedented accession of ten countries on May 1, 2004, the process continued with the accession of Bulgaria and Romania at the beginning of 2007. Croatia and Turkey started accession negotiations in October 2005 and Macedonia was granted candidate status at the end of 2005. While Croatia aims to complete its negotiations at the end of 2009, Turkey's progress has been much slower and Macedonia has not yet been given the green light to start formal talks with the EU. An even wider Union extending to the whole region of Western Balkans is already in the cards; however, persisting uncertainties about the fate of Lisbon Treaty reforms and a widespread enlargement "fatigue" among EU governments and public opinion are casting doubts on the pace and the limits of further expansion.

¶2. This message -- the sixth in a series updating our USEU cables -- is meant to help officers in positions requiring a good knowledge and understanding of the EU machinery. Other cables in this series discuss the history of the European Union (Ref A); the chief political institutions of the EU (Commission, Council and Parliament - Ref B); the EU Presidency and the European Council (Ref C); the judicial, financial, supervisory and advisory bodies (Ref D); the Treaties, structure and legal order (Ref E); and EU-U.S. cooperation under the Transatlantic dialogue (SEPTEL). End Summary and Introduction.

#### FROM SIX TO TWENTY-SEVEN

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¶3. Enlargement is often presented by the EU itself as one of its most successful policies and a powerful foreign policy tool, extending a zone of peace and democracy across Europe. The original six-member group of 1951 (Belgium, France, Germany, Italy, Luxembourg, the Netherlands) has already undergone six successive enlargements (not including the 1991 unification of Germany) to:

- Denmark, Ireland and the UK (1973);
- Greece (1981);
- Portugal and Spain (1986);
- Austria, Finland and Sweden (1995);
- Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (May 1, 2004); and
- Bulgaria and Romania (January 1, 2007).

#### ACCESSION CRITERIA

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¶4. Per the EU Treaty, any European state may apply to become a member of the Union. The Treaty fails to provide any definition of what is meant by a "European state," leaving open the issue of the EU's final borders. (Note: an application for membership submitted by Morocco in the early 1980s was rejected on the ground that the applicant was not a "European state." End note.) Nor does the Treaty itself lay down detailed political and economic conditions for membership. The first clearly-defined rules for membership were established at a June 1993 meeting of the European Council in Copenhagen and are referred to as the "Copenhagen criteria":

- Political: Achievement of stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities;
- Economic: Existence of a functioning market economy and capacity to cope with the competitive pressure and market forces within the EU;
- Administrative: Ability to take on the obligations of membership.

¶5. The 1995 Madrid European Council established a further requirement that a candidate country must have created the conditions for its integration through the adjustment of its administrative structures. This means that, while it is important that the EU body of law (the "acquis") be transposed into national legislation, it is even more important that the legislation be implemented effectively through appropriate administrative and judicial structures.

#### HOW TO JOIN THE EU

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¶6. The basic aim of accession negotiations is, indeed, to ensure that the candidate country is able to adopt and implement the "acquis" by the time of accession. The implication is that new members must abide by the whole EU body of law, including the case law of the European Court of Justice. In some cases, where specific difficulties make it impossible for the candidate to apply the "acquis" fully from accession date, the EU can accept transition measures. Derogations take the form of transition periods that the EU grants to a newcomer to bring its legislation and practices in line with the "acquis."

¶7. In essence, the membership criteria are non-negotiable, a key feature for a correct understanding of the enlargement process. Any derogation is strictly limited in scope and duration. The derogations are negotiated with the candidate country as part of the accession terms and conditions enshrined in the Accession Treaty. Unlike some of the former EU-15, the ten plus two Member States that joined in 2004 and 2007 had no recourse to simply "opt out" of any EU policies, and are committed to eventually join European Monetary Union and Schengen (some of them already did). The EU itself can also seek temporary derogations to the application of EU policies to the candidates, such as the free movement of labor into the EU. Workers from the new Central and Eastern European countries did not get immediate access to all EU labor markets after accession.

¶8. Though the legal basis for the process of enlarging the Union can be found in the EU Treaty, its various stages have been determined in a piecemeal fashion:

- An application for membership is addressed to the EU Council (the Presidency), which asks the Commission to assess the applicant's ability to meet the conditions of membership.
- The Council/European Council unanimously pronounces on the Commission's opinion (the "avis"). The Council is not required to follow the Commission's opinion. In the case of Greece, the Council decided to overcome an unfavorable "avis" from the Commission.
- If the Commission delivers a positive opinion, and the Council unanimously agrees a negotiating mandate, negotiations may be

formally opened between the candidate and all the Member States.

- As illustrated by the most recent cases of Turkey, Croatia and Macedonia, the Council may also grant an applicant country the status of EU "candidate" without agreeing to the immediate opening of negotiations on accession terms. The candidate status is a political recognition of a closer relationship with the EU, but does not automatically mean that the aspirant may hope to join in a near future.
- Moreover, the opening of accession talks requires the definition of a negotiating framework for their conduct. This covers practical arrangements for the negotiating sessions, the frequency of meetings, chairmanship, etc., but could also address sensitive political issues.
- The accession procedure per se starts with a "screening" process, a careful and very detailed analysis by the Commission of the legislation of the candidate country to identify differences with the EU "acquis" that will need to be corrected by the candidate. This is best undertaken within the framework of the contractual links existing between the EU and the candidate country.
- Negotiations on accession terms take the form of a bilateral conference between the EU Member States and the candidate country with the Commission acting as the EU negotiating agent. The negotiations take place either at senior official or ministerial-level conferences that address one or several of the policy chapters forming the EU body of law. Talks focus on the terms under which candidates will adopt, implement and enforce the "acquis." The bilateral negotiations cover all policy areas of EU competence (over 80,000 pages of the "acquis"), broken down into "chapters." There are 35 chapters in the ongoing negotiations with Turkey and Croatia.
- For each chapter, the Commission makes proposals to the Council for a "common position" of the EU. After submission to the Enlargement Working Group of the Council, a draft common position is put for consultation among Member States. All decisions on EU common positions must be reached by unanimity in the Council (in practice, the EU PermReps, meeting in COREPER (French acronym for Council of Permanent Representatives)). Only then can it be formally presented to the candidate country.
- The negotiating position of the candidate country is a chapter-specific document adopted by the government that explains the state of the country's legislation in that field, the extent to which the "acquis" has been transposed into domestic law or the time limit within which legislation is to be adopted. Where for political, budgetary, economic or social reasons a given provision of the "acquis" cannot become part of domestic legislation before accession date, the candidate country may ask for a transition

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period, specifying its duration and the manner of full transposition. The two sides then come to agreement on each chapter.

- The final accession terms are the subject of an agreement between the EU countries and the applicant. The Treaty of Accession includes an "Accession Protocol" detailing the conditions and arrangements for accession as well as "Accession Act" covering adjustments to the EU institutions to make room for the new member(s), e.g. voting rights in the Council, number of members in the European Parliament, etc. For those countries that joined in 2004, a single "Accession Treaty" covered the terms of accession for all ten. The same applied to the accession terms agreed with Bulgaria and Romania.

19. When signed, the Accession Treaty remains subject to a ratification procedure by the EU countries and each candidate country, in accordance with their respective constitutional requirements. It also requires the assent of the European Parliament, which acts by an absolute majority of its members. The completion of such ratification procedures normally takes at least 12-18 months from the end of negotiations and signing of the treaty. EU Member States generally do not have a tradition of organizing a

referendum on the accession of new countries. France, which had made an exception (for the UK) in 1972, reformed its Constitution in 2005 so that its ratification of future EU accession treaties would require the organization of a referendum; however, a new amendment in 2008 allowed for the French President not to enforce this provision. Although most of the newest EU members had no constitutional obligation to organize a referendum, a great majority of them put their accession terms to voters.

NOTHING IS AGREED UNTIL EVERYTHING IS AGREED

¶10. Given the evolving character of the EU body of law, accession negotiations are by no means a static process. The domestic legislation of the candidate country must be further screened to check its conformity with the evolving EU "acquis." The accession negotiations are governed by other principles. One of them is that each negotiation with a candidate proceeds on the basis of "its own merits". Another is that as long as the negotiations continue and until everything is agreed, nothing is agreed. In the language of the negotiators, agreement on accession terms for a specific chapter allows that chapter to be "provisionally closed," implying that either side - the EU or the candidate - may come back with questions on the chapter concerned and ask for further clarifications or a reopening of talks on the issue.

¶11. The list of "provisionally closed" chapters is therefore an easy but superficial way to assess the state of the accession negotiations. Throughout the negotiations and up to accession, the Commission (DG Enlargement) monitors the actual progress made by a candidate in its preparations for membership. Comprehensive assessments of a candidate's preparations are provided by the Commission's annual reports that contain a detailed analysis of the fulfillment of accession criteria. This monitoring is an integral part of the accession process, as progress in the negotiations is heavily dependent on concrete progress in the candidate's practices. The pace of each negotiation therefore basically depends on the degree of preparation by the candidate and on the complexity of the issues to be resolved (hence the different pace of the talks with Croatia and Turkey). For this reason, forecasting the duration of accession negotiations is imprecise, and often merely a statement of political intention.

BIGGEST ENLARGEMENT EVER

¶12. With the accession of ten Central and Eastern countries whose aggregate level of welfare was well below the EU average, the Union had to cope with wide regional disparities, differences in wage rates and purchasing power. The accession terms for the newest members provided for gradual access to the EU's system of direct payments and common market organizations under the Common Agricultural Policy (CAP), EU funding under regional and structural policy instruments (means of wealth redistribution), as well as funds to improve nuclear safety, public administration and border protection. The EU financial framework for 2007-2013 allowed for such transfers and the accession terms ensured that new members would be "net beneficiaries" in the years following accession; i.e., they should get more out of the EU budget than they contribute. The countries that joined in 2004 were not expected to immediately adopt the euro (Slovenia, Malta, Cyprus and Slovakia have all now done so). In addition to adapting the EU's legislation to ensure that its national central bank is considered independent, a newcomer also has to demonstrate that its key economic indicators converge with those of the monetary union members.

¶13. All through the negotiating process with Cyprus (Nicosia), the EU refused to make accession of the island contingent on a settlement of the intra-community dispute. In the continued absence

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of a Cyprus settlement, the application of the "acquis" to the Northern part of the island was suspended until the Council decides otherwise by unanimous decision.

NEWCOMERS STILL HAVE PROBLEMS

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¶14. The accession of Bulgaria and Romania had been envisaged from the start as part of the big wave of enlargement to the countries of Central and Eastern Europe. Both countries, which were lagging behind, joined later than the "ten" on January 1, 2007; however, the decision was political and accession took place under strict conditions and safeguards. While honoring its long-standing commitment, the EU became increasingly determined not to compromise on its principle of "conditionality." Both countries continue to be monitored closely for progress in fighting corruption and organized crime, ensuring food safety, and making proper use of EU funds. The review has clearly not been satisfactory, especially in the case of Bulgaria, whose persistent failure to correct its management problems already cost the country more than 200 million EUR in EU payments with several hundred million EUR also being frozen. Some EU watchers suggest the strict enforcement of "conditionality" reassures EU public opinion and governments that are resisting further enlargement, and cautions Turkey and Western Balkan nations lobbying for accession. Nonetheless, others staunchly oppose further accession any time in the near future.

#### EU CANDIDATES: CROATIA, TURKEY AND MACEDONIA

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¶15. On October 3, 2005, the EU agreed to open accession negotiations with Croatia and Turkey, ending months of debate on whether both countries had fulfilled their respective requirements to do so. Croatia had received candidate status in June 2004, but the EU had made the opening of talks subject to Croatia "cooperating fully" with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Turkey, which first applied in 1959 and has been in association with the (then) European Economic Community since 1963, obtained candidate status in December 1999. It took several more years, marked by continued EU calls for more Turkish reforms and protracted differences over the Cyprus issue, before accession talks were opened. Even so, the EU's negotiating framework specifies that the negotiations with Turkey are "an open-ended process, the outcome of which cannot be guaranteed." (Note: There has been no case in EU history where accession negotiations, once started, have not led to an offer of full membership. End note).

¶16. Since the start of the negotiations in October 2005, Croatia managed to open 22 chapters out of the 35 chapters into which the negotiations are divided and to provisionally close seven of them (status as of March 2009). The progress of negotiations in 2008 was hindered by a dispute between EU member Slovenia and Croatia over an unresolved border issue. Many chapters said to be "technically ready" for provisional closure remain on hold, due to Slovenia's opposition. A mediation effort to solve the dispute was recently initiated by the Commission.

¶17. Croatia is aiming to wrap up its accession negotiations by the end of the Barroso Commission's term in November 2009; however, the EU only sees the date as part of an indicative and conditional road map meant to help Croatia make the outstanding efforts required. Croatia's progress toward the final stage of the negotiations therefore depends on its completion of the necessary political, economic, legislative and administrative reforms. Taking account of the necessary delays for drawing the Accession Treaty, signing and completing national ratification procedures in all Member States, and persisting uncertainties related to the Treaty of Lisbon (some countries, led by France and Germany, making Croatia's accession dependent upon entry into force of Lisbon reforms), Croatia cannot hope to join before 2010-2011 at the earliest.

¶18. Turkey, which received candidate status in December 1999, was able provisionally to conclude just one chapter (Science and Research) and to open ten out of 35 chapters in its EU accession talks (status at end of 2008). Moreover, under a December 2006 internal decision on the handling of its negotiations with Turkey, the EU will not open eight policy chapters seen as related to Turkey's persisting restrictions vis-à-vis Cyprus and will not close any other chapter until Turkey fulfills its obligations of non-discriminatory implementation vis-à-vis Cyprus of the Additional Protocol to its Association Agreement with the European Community. The eight chapters are: Free Movement of Goods, Right of Establishment and Freedom to Provide Services, Financial Services, Agriculture and Rural Development, Fisheries, Transport Policy,



Customs Union and External Relations. The EU Council noted in December 2008 that Turkey has not made progress toward normalization of its relations with Cyprus. The EU also expects Turkey to "actively support the ongoing negotiations aimed at a fair, comprehensive and viable settlement of the Cyprus problem within the U.N. framework."

¶19. While recognizing the strategic importance of Turkey and the fact that Turkey "is now a viable market economy," the EU

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governments and the Commission continue to call for a review of Turkey's constitutional rules. They insist that participants in Turkish politics work to resolve their differences in a spirit of dialogue and compromise, respecting the rule of law and fundamental freedoms, while pursuing the reform process. The EU is calling for further "substantial efforts to ensure that Turkey meets the Copenhagen criteria" in several fields, such as "continued judicial reform, establishing an anti-corruption strategy, effective protection of citizens' rights, full implementation of the policy of zero tolerance of torture and ill-treatment, ensuring freedom of expression and of religion in law and in practice for all religious communities, respect for and protection of minorities and strengthening trade union and women's rights."

¶20. EU leaders from the start of the accession negotiations with Turkey made it clear that the country's accession could not be envisaged before the implementation of the EU financial framework starting in 2014. With the 2007 election as French President of Nicolas Sarkozy, who repeatedly expressed his opposition to Turkey's membership of the EU, further doubts have been raised on the outcome and timetable of the process. In the meantime, EU governments accepted the Commission's recommendation to pursue the negotiations and to take a final decision on the accession, or not, of Turkey once the negotiations are completed.

¶21. At the end of 2005, the European Council granted Macedonia the status of candidate country, based on a Commission's recommendation. As of March 2009, no date has been set yet for the actual start of accession negotiations. This will depend on the country's ability to meet its obligations under the Stabilization and Association Agreement (see below) and to comply sufficiently with the membership criteria. The Commission will continue to assess the progress made by Macedonia and report to the member states. But the decision on candidacy status was a political signal to the whole region of Western Balkans, giving these countries a clear European perspective.

#### POTENTIAL CANDIDATES

¶22. A wider EU is already in the cards. At the November 2000 Zagreb Summit, leaders from the EU and the Western Balkans countries confirmed their commitment to the Stabilization and Association Process (SAP), a strategy explicitly linked to the prospect of EU accession and adjusted to the level of development of each of the countries concerned. In return for receiving the accession prospect and assistance to achieve it, the countries concerned -- the EU candidates Croatia and Macedonia, as well as Serbia-Montenegro (now two separate countries), Bosnia-Herzegovina and Albania -- undertook to meet the political and economic requirements set for all aspirants. Though the UN-sponsored status talks on Kosovo resulted in no agreement, and the ensuing unilateral declaration of independence was not the subject of unanimous recognition by EU countries, the Republic of Kosovo remains part of the EU's strategy vis-a-vis Western Balkans, formally under UNSCR 1244. European integration is said to be "essential to reinforce the security and stability of the region."

¶23. The SAP proved a success in laying foundations for faster reforms. At their June 2003 Summit in Thessaloniki, EU leaders reaffirmed their commitment to the integration of the Western Balkans countries and the SAP was enriched to bring these countries closer to the EU through new instruments such as the European Partnerships, inspired by the Accession Partnerships that had been designed for the countries bound to join in 2004. The Annual Report

on the Stabilization and Association Process (released by the Commission in the fall) is a key instrument to assess the readiness of the Western Balkans countries to move closer to the EU. The report takes stock of progress made by the individual countries, monitors the development of regional cooperation and assesses the impact of the Stabilization and Association instruments.

#### PRE-ACCESSION STRATEGY AND ACCESSION PARTNERSHIPS

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¶24. In order to assist a candidate country to carry out reforms to fulfill the accession criteria and prepare for managing and absorbing EU funds post-accession, the EU provides financial and technical assistance. The pre-accession strategy defines for each candidate the short- and medium-term priorities to be met. Pre-accession financial support is devoted to meeting these priorities. For the Central and Eastern European countries that joined in 2004, pre-accession financial assistance included instruments such as PHARE (which essentially supported institution building), ISPA (development of environment and transport infrastructure) and SAPARD (agricultural and rural development support). For Cyprus, Malta and Turkey, the EU developed other pre-accession instruments.

¶25. Pre-accession assistance to Turkey is being provided under the EU's new single instrument for financial cooperation. Projects funded under the program are accession-driven; i.e., targeted to

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assist Turkey in complying with priorities set out in an Accession Partnership. Turkey carries out these projects with prior approval and/or ex-post evaluation by the Commission, an approach applying to all candidates. Like other candidates, Turkey can also obtain loans from the European Investment Bank (EIB).

¶26. For the countries of the Western Balkans, the Commission also proposed a road map setting out the stages and conditions attached to each stage of their "European perspective." Establishing a Stabilization and Association Agreement (SAA) covering both trade/economic and political dialogue with the EU is a fundamental step in this process. All Western Balkan countries have now concluded such SAAs, though ratification of the SAA with Serbia remains subject to completion of national ratification procedures. Some member States (the Netherlands, in particular), who laid particular emphasis on Serbia's full cooperation with the Hague tribunal (ICTY), continue to make the entry into force of the SAA with Serbia contingent upon the arrest and transfer to the ICTY of Serbian war criminal General Mladic. A country's track record in implementing its SAA obligations is a key element for the EU to consider any membership application. Based on a Commission opinion, the EU may grant a country the status of candidate. Croatia and Macedonia, which signed SAAs in 2001, have been using this path to make headway toward EU integration. Montenegro formally submitted its application in December 2008; as of early March 2009, the Council had still not referred the application to the Commission for its opinion. Albania also hinted at the prospect of submitting an application in the near future, though EU officials have been wary to encourage any hasty move.

#### ICELAND AND OTHER POTENTIAL MEMBERS

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¶27. In Iceland, where the majority of political and labor forces and public opinion long believed that the cost of joining would outweigh the benefits of EU membership, the terms of the debate suddenly changed with the financial turmoil in fall 2008 as the country was particularly hard hit by the liquidity crisis. Key players in the political class are now looking to have Iceland join the EU. Enlargement Commissioner Rehn encouraged them by stating that negotiations on Iceland's membership terms would definitely be "much faster than with other countries that do not have such strong ties to the EU." This is because the country's relations to the EU are based on membership to the European Economic Area (EEA), which implies participation in the EU single market.

¶28. Other countries have long been considered as potential EU

members. Norway applied twice, in 1967 and 1992, but both times a national referendum rejected membership after negotiations were completed. Switzerland applied in 1992 but a referendum the same year on joining the European Economic Area (EEA) failed, forcing Bern to shelve its application.

#### EUROPEAN NEIGHBORHOOD POLICY

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129. The EU also has stated its readiness to enhance relations with close neighbors. The so-called European Neighborhood Policy (ENP) was designed in the early 2000s for a wide range of countries, including Ukraine, Moldova and other former Soviet republics as well as Southern Mediterranean partners. The aim was to offer these neighbors a chance to develop greater political, security, economic and cultural cooperation with the EU, but the EU always refrained from making any membership commitment vis-à-vis any of these countries (and actually rejected Morocco's bid in the 1980's). A clear indication is the fact that ENP is part (in the current Barroso Commission) of the portfolio of Commissioner Ferrero-Waldner, who is responsible for the EU's External Relations, whereas Enlargement Commissioner Rehn separately handles relations with Turkey and the Western Balkans.

130. In 2008, the EU under French pressure established a new Union for the Mediterranean (official title: "Barcelona Process: Union for the Mediterranean") for developing ties with its Southern neighbors. The EU leaders also agreed to strengthen ties with the EU's Eastern partners under the ENP (Ukraine, Moldova, Georgia, Armenia, Azerbaijan, and Belarus). Aimed at enhancing cooperation both on bilateral and multilateral levels, this "Eastern Partnership" initiative will be developed and launched in the first half of 2009, based on a differentiated approach with each partner (REF F). The EU would offer new Association Agreements to partner countries willing to take on far-reaching commitments such as acquis-like legislative and regulatory reforms (e.g. on market access and energy security) and that meet the essential requirements of ENP.

#### WHERE SHOULD THE EU END?

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131. The issue of the final borders, which has always been a political taboo, continues to haunt the Union. The EU leaders recently set up an independent "Reflection Group" to advise the EU on its long-term future and to "meet challenges more effectively" on

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the horizon 2020-2030. The idea of such a panel, headed by former Spanish PM Felipe Gonzalez, originally came from French President Sarkozy, who was willing to engage in a discussion of the EU's geographical limitations. Pro-enlargement countries (including the UK, the Czech Republic and the Nordics) and the Commission were suspicious of a proposal perceived as intended to stop the enlargement process and to shift EU policy against Turkish membership. The Portuguese Presidency in the second half of 2007 then proposed to give the panel a broadly-worded mandate that avoided sensitive issues, including any specific reference to the EU's future borders. The establishment of the panel nevertheless owed much to the need to enlist French support for the continuation of the accession talks with Turkey.

#### LEAVING THE EU

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132. No country ever stated its intention of leaving the EU and there is no "exit clause" in the Treaty order as currently effective. However, with the Treaty of Lisbon (not fully ratified and not in force yet) the EU equipped itself for the first time with such an exit clause, stating that any Member State may withdraw from the EU. This would be done in accordance with that country's constitutional requirements. More specifically, the Treaty of Lisbon sets out a mechanism for negotiation and conclusion of a withdrawal agreement with the other Member States. The Member State concerned has to notify the Commission of its intention and then negotiate on the terms. The withdrawal agreement is concluded on behalf of the Union by the Council, acting by a qualified majority after obtaining the consent of the EP. The EU legal framework then



ceases to apply to the country concerned, which will be allowed to reapply for membership in the future, subject to the accession procedure as described in this cable.

COMMENT

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¶33. The pull of the EU has been a powerful leverage for transforming former Communist countries in Europe. The EU and its Member States can only benefit from having neighbors that are democratic and prosperous market economies, but they need to communicate better on the objectives and challenges of accession processes. Some leaders in the EU fear that ongoing expansion might hinder the Union's ability to function as a coherent whole. While stating its willingness to honor commitments, the EU has therefore been increasingly determined to ensure that aspirant countries can only proceed from one stage of the rapprochement process to the next once they have strictly met the conditions for that stage. The latest enlargement package tabled by the Commission in fall 2008 reflects this delicate balancing act, for which Enlargement Commissioner Rehn has proved a deft advocate.

MURRAY